

**In The United States District Court  
For The District of Columbia**

[FILED 9/20/95]

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**United States of America,**  
Department of Justice  
Washington, D.C. 20530

*Plaintiff,*

v.

Civil Action No.:95 1804

**National Automobile Dealers  
Association,**  
8400 Westpark Drive  
McLean, Virginia 22102

*Defendant.*

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**COMPLAINT**

(For Violations of Section 1 of the Sherman Act)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to prevent and restrain the defendant, the National Automobile Dealers Association ("NADA"), from engaging in unlawful anticompetitive conduct intended to reduce price competition among automobile dealers, and complains and alleges as follows:

Since at least 1989, the NADA has actively engaged in a campaign designed to lessen price competition in the retail automobile industry. Through the use of a group boycott, the NADA attempted to pressure automobile manufacturers to change their policies by eliminating consumer rebates and significantly reducing discounts given to large volume automobile buyers, who often resold slightly used cars to consumers at prices substantially below the price of a new car. In particular, the NADA recommended that all dealers significantly reduce their inventories to 15-30 days' supply to coerce manufacturers to raise the prices the manufacturers charged large volume

automobile buyers and thereby constrain the latter's ability to compete. The NADA also solicited agreements from its members not to advertise retail prices based on the invoice price of an automobile, and agreed to tell its members to refuse to do business with automobile brokers. The instant action seeks to enjoin the NADA from continuing to engage in conduct intended to limit price competition in the retail automobile industry.

### **I. The Defendant NADA**

1. The NADA is a corporation organized and existing under and pursuant to the laws of the State of Delaware. It maintains offices at 8400 Westpark Drive, McLean, Virginia 22102, and 412 1st Street S.E., Washington, D.C. 20003.

2. The NADA is a national trade association that represents franchised new car and truck dealers in the United States. In 1994, approximately 84% of franchised dealers in the United States were NADA members. Its members sold approximately \$375 billion of cars and other automobile products and services in 1993.

### **II. Jurisdiction and Venue**

3. This complaint is filed pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, in order to prevent and restrain violations by the NADA of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

4. Venue is properly laid in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because the NADA transacts business and is found within this District.

5. The NADA and its members are engaged in, and their activities substantially affect, interstate commerce.

6. The members of the NADA compete with each other and with other car and truck dealers to sell cars and other automobile products and services to consumers. Dealers compete on, among other things, price, quality of service, and the selection of cars available for purchase at their dealerships.

### **III. Concerted Action**

#### **A. Agreement Concerning Inventory Levels**

7. In recent years, automobile manufacturers have engaged in a number of sales and marketing practices that have been unpopular with many automobile dealers. Among these practices are the use of fleet subsidies and consumer rebates.

8. Fleet subsidies are substantial discounts offered by manufacturers on the purchase of large quantities of cars by rental car companies, large corporations, and other high volume buyers. Manufacturers have sometimes offered fleet subsidies that are larger than the discounts they offered to franchised dealers.

9. Fleet purchasers, and, in particular, rental car companies, frequently resell fleet vehicles directly to the public or, in some instances, to independent (*i.e.*, non-franchised) automobile dealers, who in turn sell them to the public. Through at least 1991, used fleet vehicles with relatively low mileage were often sold in the same year as new cars of the same model year. Thus, sales of some fleet vehicles competed directly with sales of new vehicles, but fleet vehicles were often priced at thousands of dollars less than a new car.

10. Consumer rebates are cash incentives offered by manufacturers directly to consumers. In recent years, manufacturers have increased the amount and frequency of consumer rebates that they offer to entice consumers to purchase new automobiles. In many cases, manufacturers' cash rebates constitute most, if not all, of a consumer's down payment for a new car. Consumer rebates thus make new cars more affordable to those who otherwise would not be able to purchase a new car.

11. Beginning at least as early as 1989 and continuing at least until 1992, the NADA frequently stated its opposition to the increased competition generated by fleet subsidies. In particular, it alleged that fleet subsidies created a class of nearly new vehicles that, because of their lower prices, unfairly competed with new vehicle sales. The NADA repeatedly urged

manufacturers to stop offering fleet subsidies that were greater than the discounts offered to franchised dealers.

12. The NADA also objected to consumer rebates. It believed that when manufacturers offered rebates to consumers, franchised dealers were forced to offer their own rebates to consumers who purchased cars immediately before and after the rebate period. On numerous occasions between 1989 and 1992, the NADA urged manufacturers to give franchised dealers, rather than consumers, all of the discounts and incentives offered by manufacturers to induce the purchase of a new car.

13. In September, 1989, the NADA's president drafted a document entitled "An Open Letter to All Dealers" ("Open Letter"). The Open Letter discussed financial difficulties facing many dealers and stated that fleet subsidies contributed to automobile dealers' financial difficulties. It also discussed the NADA's attempts to convince manufacturers not to offer rebates and instead give all incentives to dealers.

14. The Open Letter concluded with several "recommendations for survival." Among these was the recommendation that all automobile dealers reduce their inventories to a 15-30 day supply of new vehicles. The letter then stated that the NADA would "advise dealers immediately of any movement by their franchisors which will assist dealers."

15. The Open Letter was unanimously endorsed by the NADA's Executive Committee on October 16, 1989, and by its board of directors on October 17, 1989.

16. On October 23, 1989, the president of the NADA wrote to Oregon dealers, urging them to look for the Open Letter in the October 30 issue of *Automotive News*, and calling the Open Letter the NADA's "first response" to manufacturers who made little or no compromise with the NADA.

17. In the October 30, 1989 *Automotive News*, the automobile industry's principal trade publication, the Open Letter appeared as a two page advertisement. It was also published in the

NADA's official publication, *Automotive Executive*, and sent to numerous representatives of the media and major automobile manufacturers.

18. At the NADA's 1990 Annual Convention in Las Vegas, Nevada, the President of the NADA described the Open Letter and its effect upon manufacturers:

We've tried to negotiate for years -- and we tried all this year. Believe me, believe me, friends, I said to each of the big, big three, "Throw a bone to a dog -- give me at least one of our four priority issues I can take to our dealers at convention in Las Vegas." I couldn't come close until after our October 30th ad . . . but dealers all over this nation started looking at inventory and adjusting order banks to cut expenses for their very survival. Well, all of a sudden that got noticed! You bet!

*Twenty-five thousand dealerships -- doing anything more or less together -- is bound to come to the attention of our suppliers. [Emphasis added.]*

19. The NADA and its officers and directors intended the Open Letter to constitute a threat to automobile manufacturers that dealers would collectively reduce their inventories unless manufacturers adopted policies more favorable to dealers.

B. Agreements Concerning Dealer Advertisements and Sales to Brokers

20. Like manufacturers, some dealers engage in sales and marketing practices that are unpopular with other dealers. Invoice advertising and selling cars to brokers are examples of dealer marketing practices that are unpopular with many dealers and with the NADA.

21. "Invoice advertising" means advertising sponsored by a franchised dealer which reveals the dealer's invoice or cost to purchase a vehicle, or which offers to sell the vehicle to the public at a price based upon the dealer's invoice or cost to purchase the vehicle. Officers and directors of the NADA delivered numerous speeches denouncing invoice advertising because, *inter alia*, they believed that it has led to lower retail selling prices for new vehicles.

22. On several occasions between 1989 and 1994, an officer of the NADA contacted automobile manufacturers to complain about dealers who had advertised retail prices that were a specific dollar amount over the dealer's invoice.

23. This NADA officer also communicated directly with the dealers in question and obtained their agreement not to engage in further invoice advertising. In the course of these communications, the officer referred to his position with the NADA in a way that suggested that he was acting on behalf of the NADA in making the complaints and in seeking agreement from the dealers.

24. In February 1994, the NADA members, acting through their Board of Directors, appointed a task force to study the impact of automobile manufacturers' policies on new vehicles' suggested gross margins. This report, ultimately entitled "A SPECIAL REPORT: From the NADA Task Force on Reduced New Vehicle Margins" ("Reduced Margins Task Force Report") was delivered to, among others, automobile manufacturers' dealer councils' chairmen and vice chairmen, automobile trade association executives, numerous NADA members, and representatives from major automobile manufacturers.

25. In addition to calling on all automobile manufacturers to increase their suggested gross profit margins, the NADA Reduced Margins Task Force Report included recommendations for manufacturers and dealers with respect to automobile brokers. Automobile brokers generally buy new vehicles from franchised dealers at discounted prices and resell the vehicles directly to the public in competition with franchised dealers.

26. The Reduced Margins Task Force Report included the following recommendation to automobile dealers:

"Refuse to do business with brokers or buying services. They inevitably do harm to new vehicle gross margin potential."

27. The NADA later sent a memorandum and revised pages for the Reduced Margins Task Force Report that eliminated this recommendation, but not until the report had been disseminated to over 200 dealer representatives and other individuals active in the automobile industry.

### **First Cause of Action**

(Agreement to Boycott Manufacturers)

28. The NADA, through its officers and directors, agreed to orchestrate a group boycott of automobile manufacturers to coerce manufacturers to decrease the discounts offered to large volume buyers and to eliminate consumer rebates. Specifically, the NADA called upon its dealer members to reduce their inventories of new cars.

29. That agreement constituted a combination or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

30. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

### **Second Cause of Action**

(Agreement to Fix Inventory Levels)

31. The NADA, through its officers and directors, agreed to urge its dealer members to maintain new vehicle inventory at levels equal to 15-30 days' supply.

32. That agreement constituted a combination or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

33. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

### **Third Cause of Action**

(Agreement To Restrict Advertisements)

34. The NADA, through its officers and directors, solicited and obtained agreements from member dealers not to engage in invoice advertising.

35. Those agreements constituted combinations and conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

36. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

#### **Fourth Cause of Action**

(Agreement to Boycott Automobile Brokers)

37. The NADA, through its officers and directors, agreed to urge its dealer members not to do business with automobile brokers.

38. That agreement constituted a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

39. Unless prevented and restrained, the NADA will continue to engage in the unlawful conduct as alleged herein.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff respectfully prays for relief as follows:

1. That this Court adjudge and decree that the NADA has entered into unlawful contracts, combinations, or conspiracies which unreasonably restrain trade in interstate commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

2. That the NADA and all persons, firms, and corporations acting on their behalf and under their direction or control be permanently enjoined from engaging in, carrying out, renewing or attempting to engage in, carry out or renew, any contracts, agreements, practices, or understandings in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

3. That plaintiff have such other relief that the Court may consider necessary, just, or appropriate to restore competitive conditions in the markets affected by the NADA's unlawful conduct; and



4. That plaintiff recover the costs of this action.

Dated: September \_\_\_, 1995

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